

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 10-11

October 23, 2009

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Procedures for E-Filing Referrals to the Board for Ruling on a
Petition to Revoke an Investigative Subpoena

In order to expedite the processing of petitions to the Board to revoke investigative subpoenas, all Regions should utilize E-filing procedures to refer these matters. The procedures for processing these actions are set forth below.

When a Region issues an investigative subpoena, the person or entity upon whom the subpoena is served may file with the Regional Director a petition to revoke the investigative subpoena. The Region should then prepare and file an opposition to the petition to revoke its investigative subpoena as soon as possible, generally within 5 business days after receipt of the petition to revoke. Pursuant to Section 102.31 of the Board's Rules & Regulations, the Regional Director is required to refer the petition to revoke to the Board for ruling. The referral generally is done by issuance of an order referring the matter to the Board.

When a petition to revoke an investigative subpoena is filed with the Regional Director, time is of the essence since the investigation may be held in abeyance pending the Board's ruling on the petition to revoke. In order to expedite a decision on the investigative subpoena and avoid casehandling delays, Regions should make the referral to the Board by utilizing the Agency's E-filing process. To facilitate this process, the following protocol should be followed:

1. **Compiling the Document:** The order referring and proof of service of the order, the petition to revoke and any attachments, and the opposition to the petition to revoke and any attachments (including a copy of the subpoena and an affidavit of service of the opposition) should be converted to **one** Adobe (pdf) document. It is important that the document be in the following order (with 1 on top): (1) the order referring and proof of service of the order; (2) the petition to revoke and all attachments; (3) the subpoena and proof of service of the subpoena (unless attached to the petition to revoke); (4) the Region's opposition to the petition to revoke and all attachments; and (5) the certificate of service of the Region's opposition. Adobe Pro 9.0 can be used to combine separate pdf documents into one document or the Region can scan the paper copies of these documents and create one continuous pdf document. The Adobe document should be named: PRV.XX-CA-

12345.Referral Order Re Investigative Subpoena.pdf. We encourage Regions to use the bookmark feature in Adobe to mark the starting page for each of the documents that comprise the referral order. The referral order filed with the Board is converted into a single document in order to satisfy the Board's requirement that documents filed with the Board must be complete.

2. **Filing the Document:** This Adobe file should then be sent to the Board through the Agency's E-filing system. To E-file, go to the Agency's website at <http://www.nlr.gov> and then click on the **E-Gov** tab and click on **E-Filing** on the pull down menu. When the Region E-files, it will be filing as "General Counsel" even though the referral is being made by the Regional Director.

Before November 2, 2009, the Region will select the option to file the document with Board/Office of Executive Secretary and follow the instructions. When asked to choose the "document description" for the document being filed, the filer should select "Other Documents."

On and after November 2, 2009, there will be a single Agency E-filing system so the filer will then follow the instructions that begin with entering the lead case number. When choosing the type of document to be filed, the filer should select "Petition to Revoke a Subpoena or Response to a Petition to Revoke a Subpoena".

3. **Serving the Document:** When E-filing the referral order with all pertinent documents (see paragraph 1 above) with the Board, the Region must serve a copy of the document on the party filing the petition to revoke. Since the document is being E-filed with the Board, the Board's rules require a party to be served by electronic mail (e-mail), if possible. If the party does not have the ability to receive electronic service, the party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

Because the Board's order on the petition to revoke and opposition is generally unpublished, the Region will receive the Board's order on the petition to revoke through the regular mail and not by E-Issuance until such time as E-Issuance is extended to cover unpublished Board decisions. However, providing the Board with the referral order and all pertinent documents in electronic form will expedite the Board's resolution of these issues.

If you have any questions regarding this memorandum, please contact your Assistant General Counsel or Deputy or the undersigned.

/s/
R.A.S.

cc: NLRBU
Release to the Public

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